

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 12-20656

HON. MARK A. GOLDSMITH

vs.

ERIK E. THOMPSON,

Defendant.

_____ /

**ORDER TRANSFERRING DEFENDANT’S MOTION UNDER 28 U.S.C. § 2255
(DKT. 65) TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH
CIRCUIT**

This matter is before the Court on Defendant’s motion to correct a clerical error (Dkt. 65), in which he contends that certain errors regarding his criminal history were included in the presentence investigation report, thereby resulting in an increased sentence. On April 20, 2015, the Court denied Defendant’s motion under 28 U.S.C. § 2255 to vacate his sentence (Dkt. 53). On December 28, 2015, Defendant filed a motion to correct a clerical error (Dkt. 54) advancing the same argument raised in the present motion. The Court denied this motion on the merits and did not treat it as a successive motion under § 2255 because it did not collaterally attack Defendant’s sentence but rather alleged distinct harms (Dkt. 57). Defendant thereafter sought certification from the Sixth Circuit to file a second motion under 28 U.S.C. § 2255 (Dkt. 60), which the Sixth Circuit denied (Dkt. 62).

Defendant’s present motion to correct a clerical error is properly construed as a second motion to vacate his sentence under 28 U.S.C. § 2255, as it is a collateral attack on his sentence. “[W]hen a second or successive petition for habeas corpus relief or § 2255 motion is filed in the

district court without § 2244(b)(3) authorization from [the Sixth Circuit], the district court shall transfer the document to [the Sixth Circuit] pursuant to 28 U.S.C. § 1631.” In re Sims, 111 F.3d 45, 47 (6th Cir. 1997).

Accordingly, the motion to vacate sentence under 28 U.S.C. § 2255 (Dkt. 65) is transferred to the United States Court of Appeals for the Sixth Circuit.

SO ORDERED.

Dated: August 29, 2019
Detroit, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge